

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

RICHARD A. CASE,)	
)	CASE NO. C05-2074TSZ
Plaintiff,)	
)	
v.)	ORDER
)	
JOHN TAYLOR HICKS, et al.,)	
)	
Defendants.)	
_____)	

The Court ADOPTS the Report and Recommendation, docket no. 23, with the following clarifications. Although plaintiff contends that the Court must grant him leave to amend his complaint, the Court need not grant leave to amend in lieu of dismissal if the Court determines that the deficiencies in his complaint could not possibly be cured by the allegation of other facts. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Here, plaintiff's complaint alleges that the defendants conspired to fabricate evidence against him in his criminal case. Compl., docket no. 8.

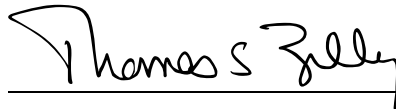
01 Success on plaintiff's claim in this case would necessarily undermine his state criminal
02 conviction, which plaintiff concedes has not been reversed, expunged, or invalidated.
03 Therefore, the Court need not grant plaintiff leave to amend because he can plead no set
04 of facts that would establish a cognizable claim for relief under 42 U.S.C. § 1983.
05 Heck v. Humphrey, 512 U.S. 477 (1994); see also Wilkinson v. Dotson, 544 U.S. 74,
06 81-82 (2005) ("[A] state prisoner's § 1983 action is barred (absent prior invalidation)-no
07 matter the relief sought (damages or equitable relief) . . . if success in that action would
08 necessarily demonstrate the invalidity of confinement . . ."). Plaintiff's claims are
09 DISMISSED without prejudice.
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11 The Court further DENIES plaintiff's motion for an extension of time, docket
12 no. 24. Although captioned as a motion for an extension of time, the Court construes
13 plaintiff's motion as a request for leave to amend his complaint to state new claims for
14 relief against new parties. Specifically, plaintiff seeks to abandon his section 1983
15 claims in lieu of alternative relief under the federal declaratory judgment and mandamus
16 statutes. Plaintiff requests that this Court issue a Writ of Mandamus directing the state
17 court that heard his criminal case to process his motion for relief from judgment, which
18 plaintiff contends the state court has ignored. Plaintiff's proposed amendments would
19 not state a cognizable claim for relief because this Court is without jurisdiction to issue a
20 writ of mandamus to a state court. See Smith v. Thompson, 437 F. Supp. 189, 191
21 (E.D. Tenn. 1976) (holding that the federal court did not have jurisdiction to issue a writ
22 of mandamus directing a state court to act on plaintiff's post-conviction petition for

01 relief); Clark v. Washington, 366 F.2d 678, 681 (9th Cir. 1966) (“The federal courts are
02 without power to issue writs of mandamus to direct state courts or their judicial officers
03 in the performance of their duties . . .”).

04 The Clerk is directed to send copies of this Order to all counsel of record, to
05 plaintiff pro se, and to Magistrate Judge Theiler.

06 DATED this 25th day of October, 2010.

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10 Thomas S. Zilly
11 United States District Judge
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